

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
A National Broadband Plan for Our	)	GN Docket No. 09-51; FCC 09-31
Future	)	

To: The Commission

**COMMENTS OF NATIVE PUBLIC MEDIA  
AND THE NATIONAL CONGRESS OF AMERICAN INDIANS**

Native Public Media (“NPM”) and the National Congress of American Indians (“NCAI”) respectfully submit these comments in response to the Commission’s Notice of Inquiry (“NOI”) regarding the development of a national broadband plan (released on April 8, 2009).<sup>1</sup> As NPM is an organization committed to promoting access to and ownership of all media of communications by Native communities, and NCAI is the oldest and largest national organization representing federally recognized Tribal government entities, both NPM and NCAI fully support a national broadband plan aimed at establishing or improving access to important broadband technologies by Tribal residents and other unserved and underserved communities across the country.

**I. BACKGROUND**

NPM represents the interests of thirty-three Native owned public radio stations that serve Native nations as well as non-Native listeners throughout the United States.<sup>2</sup>

---

<sup>1</sup> *A National Broadband Plan for Our Future*, GN Docket No. 09-51, Notice of Inquiry, 24 FCC Rcd 4342 (2009) (hereafter “Notice of Inquiry”).

<sup>2</sup> Native Public Media, formerly known as the “Center for Native American Public Radio,” was created as a center under the National Federation of Community Broadcasters with seed funding from the Corporation for Public Broadcasting. A list of (footnote continued)

Since its launch in 2004, NPM's primary focus has been supporting existing Native American public radio stations and promoting ownership for more Native communities by serving as an advocate, national coordinator, and resource center. NPM recognizes, however, that the rapid expansion and innovation occurring in the broadband markets is profoundly changing the way Americans communicate and consume media. Therefore, NPM is focused not only on the needs of Native American radio stations, but also on helping Indian Country gain access to vital broadband services.

Advocating on behalf of its member Tribes from across the United States in consensus based decision-making, NCAI is a forum for federal-Tribal policy on all of the major issues confronting Native peoples today, including the challenges of broadband deployment. NCAI works and continues to coordinate with the Commission on a number of Tribal outreach and education efforts. NCAI and NPM have co-hosted several of the Commission's Indian Telecommunications Initiatives or "ITI" regional workshops and roundtables, and annually co-hosts the annual high level consultation "FCC-NCAI Dialogue on Increasing Tribal Telecommunications" between FCC officials and members of the NCAI Telecommunications Subcommittee. Since the institution of NCAI's Telecommunications Subcommittee in 2001, NCAI has adopted many resolutions, representing formal national Tribal policy prerogatives, to support the deployment of telecommunications, broadcast and broadband services throughout Indian Country. NPM is a frequent and active participant in the NCAI Telecommunications Subcommittee.

---

the NPM member stations can be found at  
[http://www.nativepublicmedia.org/index.php?option=com\\_content&task=view&id=26&Itemid=48](http://www.nativepublicmedia.org/index.php?option=com_content&task=view&id=26&Itemid=48).

Both NCAI and NPM are appreciative and pleased to submit these joint comments to the Commission.

Improving the communications infrastructure on Tribal lands is critical to the self-government, economic development, civic participation in the national democratic process, and the nation building objectives of federally recognized American Indian Tribes and Alaska Native Villages (“Tribes” or “Native Nations”). The deployment of broadband services is essential to the quality of life for Tribal communities and families, not just in terms of residential service, but also with regards to primary and continuing education; telemedicine and distance diagnosis; modern media involvement; public safety and homeland security, and, of course, the business-oriented requirements of this primary critical backbone communications infrastructure and necessary requirement for developing a sustainable knowledge-based economy.

## **II. STATUS OF BROADBAND DEPLOYMENT IN INDIAN COUNTRY**

As the FCC acknowledges, life without access to broadband services is unimaginable for many Americans.<sup>3</sup> This vital access has dramatically changed the way Americans perform everyday tasks, such as banking and consuming media, as well as provide exciting new opportunities, such as distance learning and telehealth medical care. Although many Americans have access to, and benefit from, the opportunities that broadband services provide, deployment rates in Indian Country lag far behind.

There are 4.3 million Native Americans in the United States and 562 federally recognized Native Nations; all inherently sovereign with their own political and Tribal

---

<sup>3</sup> Michael J. Copps, Acting Chairman, Federal Communications Commission, *Bringing Broadband to Rural America: Report on a Rural Broadband Strategy*, GN Docket No. 09-51, at 1 (2009).

structures. More than 66 million acres of Tribal land are held in trust or trust-restricted status by the United States on behalf of Native peoples and their governments. However, the disadvantaged situation of many Native Nations results in poor access to, and virtually no ownership of, communications media, telecommunications companies, and broadband providers. Only sixty-eight percent of households on Tribal lands have a telephone compared to a national average above ninety-eight percent. With only eight Tribes owning and operating their own telecommunications companies, broadband penetration on Indian lands is estimated at less than ten percent.<sup>4</sup> The need for enhanced access to broadband services by Native Americans cannot be overstated.

Given the poor state of broadband deployment in Indian Country, a national broadband plan is critical to increase the access and opportunities available to Native Americans. Indian Country is being denied opportunities that many Americans take for granted. Meaningful inclusion in a national broadband plan that recognizes the unique challenges, opportunities, and responsibilities of the federal government to those in Tribal communities is a tremendous first step towards ensuring that every Native American community and family is provided affordable and reliable access to necessary broadband services.

---

<sup>4</sup> See U.S. Government Accountability Office, *Challenges to Assessing and Improving Telecommunications for Native Americans on Tribal Lands*, GAO-06-189 (Jan. 2006) (hereafter “GAO Report”) (acknowledging, however, that there may be a lack of information about subscribership to Internet access services by households on Tribal lands because this information is untracked by any federal survey).

### **III. ESTABLISHING GOALS AND BENCHMARKS TO MEASURE PROGRESS**

Congress and the FCC must act immediately to provide broadband access to Indian Country. In furthering this deployment, a number of goals should be met in determining that high-quality, easily-accessible, and affordable access to broadband services has been provided to Native Nations. When measuring progress, NPM and NCAI make the following recommendations:

#### **A. Broadband Deployment Benchmarks**

NPM and NCAI recommend that Congress and the FCC establish a minimum benchmark of an eighty percent increase in broadband penetration on Native American reservations and Tribal homelands within five years. This percentage will simply allow Native Americans to begin to catch up with the rest of the nation. However, in order to accurately measure deployment rates, the data associated with any such benchmarks must be reliable if progress in terms of quality of service, availability of the access, and affordability to Tribal residents is to be accurately measured.

In a recent exploratory survey of broadband use among Native Americans commissioned by NPM, the preliminary findings show that, overall, participants in the “NPM Blueprint Broadband Survey” were very knowledgeable on emerging and new communications technology advancements, utilizing multimedia and communications technologies at rates that are much higher than national norms. While the findings should not be misconstrued to mean that broadband access is widely available on Tribal homelands, these results demonstrate that the survey participants have managed to find

ways to access broadband resources and there is great demand for these resources among various segments of the Native American community.<sup>5</sup>

While a few Tribes and Tribal community projects, such as the Coeur d'Alene Tribe, Warm Springs Confederated Tribes, and the Southern California Tribal Chairman's Association's Tribal Digital Village, are successfully deploying broadband to anchor institutions located on their Tribal homelands and/or to local citizens, other Native Nations continue to struggle with broadband backhaul, middle-mile and cost challenges. There is no question that the demand for broadband access is great among Native Americans and the non-Tribal member residents of communities throughout Indian Country.

## **1. Broadband Defined**

The definition of broadband should be dynamic and evolving to accommodate rapid changes in technology, but clear and sturdy enough to protect the individual consumer and community as a whole. Attaching a static definition to broadband virtually assures its irrelevance over time, and is likely to create additional barriers to broadband deployment. Assigning speed tiers that will be obsolete in the years to come is also impractical, as it will provide non-deployment loopholes for providers in the future.

As NCAI testified at the Department of Commerce, National Telecommunications and Information Administration's March 17, 2009 field hearing on the Recovery Act Broadband Technology Opportunity Program:

---

<sup>5</sup> Sascha D. Meinrath, *Native Public Media Blueprint Project: IT Infrastructure Survey, Initial Report of Results* (forthcoming 2009).

...the manner in which the agencies define 'broadband' will have a ripple effect on both the type and scope of development on Tribal lands, including both those of American Indian Tribes and Alaska Native Villages. Time and again, Federal standards set in this context define what the market will provide to the consumer and what types of projects grant recipients are able to create. Thus, when *technology or speed* standards associated with the grants are simplistic or low, the projects created often meet only those standards.<sup>6</sup>

Furthermore, Congress and the FCC should consider important latency issues in addition to actual transmission speeds. Therefore, NPM and NCAI recommend that to count towards the overall penetration rate, broadband service should be defined by standards of speed for broadband access that rests on symmetrical upload and download rates making it easy not only to consume but produce content. The regulatory framework should accommodate changes in standards of speed as the technology continues to evolve. However, some Tribal communities will continue to experience backhaul limitations and should be afforded the right to determine their own optimal speed. Further, low latency networks that offer a high quality of service and the functionality to meet the service and applications needs of Tribal communities should be a part of the over definition of broadband. As a public infrastructure, the build-out and regulation of networks must ensure connection to the backbone of the global Internet at speeds that break the barriers of communications and commerce.

---

<sup>6</sup> Testimony of Geoffrey C. Blackwell on behalf of The National Congress of American Indians, and Chickasaw Nation Industries, Inc. at the American Recovery and Reinvestment Act of 2009 Broadband Initiative NTIA/USDA/FCC Public Roundtable Field Hearing, Tuesday, March 17, 2009, at 1. A copy of this testimony is attached at Appendix A.

## **2. Access Defined**

There are several key elements of universal access. First, consumers must have physical access to the infrastructure, and Congress and the FCC should advance policies that support bandwidth that will enable people to use broadband services, regardless of where they live. Second, Congress and the FCC should make workplace access a national prerequisite for economic stimulation, especially for those with no or limited access at home. Third, due to the lack of household resources in rural communities, Congress and the FCC should encourage enhanced public access through Tribal telecenters, libraries, chapter houses, community centers, clinics, schools and other public hubs. Fourth, Congress and the FCC should endorse policies that support local Native content development, linguistic diversity on the Internet, and the exchange of information across languages.

NPM and NCAI recommend that all unserved and underserved populations have the same definition of broadband service. Definitions should not discriminate based on service to residential or business communities, as any such discrepancies may favor one use over another (e.g., business over residential) and may not accurately reflect use and adoption, especially when telecommuting is becoming more widely utilized. Also, many small businesses in Native communities are run from residences, and given the current economy, many more home businesses may evolve. Furthermore, in Tribal communities where socio-economic conditions are pronounced, the residential consumer requires the same access and definition of broadband as applied as the business consumer. Therefore, regardless of the metrics adopted to determine access, they must be universally applicable to both residential and business customers.



### **3. Affordability Defined**

Broadband access hinges on affordability in rural reservation communities. NPM and NCAI recommend that Congress and the FCC undertake a thorough analysis of affordability for Tribal residents. Such an analysis should necessarily involve a review of current market competition and pricing policies to determine their impact on deployment, competition, connection, access and adoption in Native American communities. In seeking ways to make broadband affordable in rural Tribal homelands, Congress and the FCC should explore how federal investments in community-based broadband development can be strengthened; and how Tribal-based ownership of broadband infrastructure and services can be leveraged to make broadband not only affordable, but sustainable.

#### **B. Measuring Progress**

In order to effectively measure whether progress is being made, the current data collection methods must be improved. As a means to that end, NPM and NCAI support enhanced data collection procedures regarding the state of broadband deployment in Indian Country. Although anecdotal evidence places broadband deployment in Indian Country at only ten percent, the true rate is unknown because no agency collects data specifically related to Tribal lands, nor has a single federal agency conducted a study that focuses on deployment of broadband facilities on Native American reservations.<sup>7</sup> Enhanced data collection procedures for Tribal areas are thus imperative. NPM and NCAI suggest the following:

---

<sup>7</sup> See GAO Report, *supra* note 4.

1. Data should be obtained regarding the challenges faced specifically by Tribal communities with regard to the deployment and adoption of broadband services. Issues such as affordability, language barriers, technology training, physical terrain, build-out costs, and other obstacles to broadband roll-out should be examined.

2. Abandon the zip code and Census Tract methods of defining where broadband service exists in favor of mapping at a street address (or P.O. Box) level or local community level (with the help of Tribal governments where no street addresses exists). Although the FCC's order requiring Census Tract broadband deployment data was a step in the right direction,<sup>8</sup> both methods still consistently overestimate the availability of broadband in rural areas. For example, the existence of an Internet service provider in a nearby border town that shares the same zip code, or is even within the same Census Tract, as a Tribal area does not mean that those Tribal residents will have access to broadband services. Mapping at the street address (or P.O. Box) level or local community level are far superior. Field-based mapping techniques are available today and can lend validity in mapping communities without street addresses or where only postal boxes are used for addresses. This change in methodology is likely to greatly improve the quality of information available with respect to broadband availability in rural areas. Furthermore, such mapping can be utilized to address other challenges in Tribal communities, such as public safety 911 issues.

---

<sup>8</sup> Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership, WC Docket No. 07-38, Report and Order and Further Notice of Proposed Rulemaking, FCC 08-89 (2008).

3. Focus the data collection on the realities of broadband deployment (or lack thereof) on Tribal lands. Data should be collected regarding actual transmission speeds, as opposed to advertised speeds, which tend to overstate the broadband functionality available on Tribal lands. This data would help Tribes and others concerned about Internet access on Tribal lands to determine which technologies, existing or emerging, are most promising for rapid adoption and more advanced broadband deployment in Tribal areas.

4. The data collection process must collaborate with the specific Tribes from whom data is being collected. Only they will understand the various challenges they have faced, and solutions they have devised, over time regarding communicating effectively with Tribal residents. The success of any enhanced data collection efforts for Tribal lands will likely depend on this open and ongoing collaboration and consultation between federal and Tribal governmental entities.

5. Data collection should also include the current market availability of broadband services. Data should be collected as to what tiers and packages of services are available at what prices in Tribal lands. This market analysis should also focus on the reasons behind any market failures, and why services either are unavailable or are unaffordable, in Indian Country and rural reservation areas.

6. The overall data collection process will benefit from data maps that utilize verifiable and reliable data sources; a standardized GIS schema at the national level; mapping of broadband service upload and download speeds at time of peak usage; a description of factors that affect adoption; and a central portal that brings together various

federal agencies that could advance broadband deployment in Indian Country, including the construction of roads and highways.

7. NPM and NCAI applaud the Commission's intention to use web-based systems to coordinate broadband roll-out with Tribal governments.<sup>9</sup> However, given the lack of broadband deployment to Tribal lands, the benefits of any such system are likely to be limited. In order to reap the benefits of web-based coordination, a Tribal community must first have the basic broadband service necessary to access the system. As discussed, given the extraordinarily low broadband penetration rate on Tribal lands, such a system would be impractical and inefficient in working with Tribal residents. Therefore, NPM and NCAI recommend that Congress and the FCC consider instituting a Tribal office within the Commission to coordinate and streamline broadband deployment to Indian Country on a Tribe-by-Tribe basis and assist the Chairman, Commissioners, and Bureaus and Offices of the Commission to better consult and coordinate with Native Nations.

8. Pursuant to the recommendations of the most recent communications resolution of NCAI, entitled "Ensuring Tribal Telecommunications and Broadcast Priorities are Included in the 2009 Federal Government Transition Prerogatives," the FCC should conduct hearings throughout Indian Country to ascertain, among many other items of information necessary to the work of the Commission in Indian Country, as much information about the state of broadband deployment in Indian Country to arrive at

---

<sup>9</sup> Notice of Inquiry, *supra* note 1, at ¶ 118 .

a National Tribal Broadband Plan specific to the unique needs of Indian Country.<sup>10</sup> This resolution represents the will of Tribal nations from across the United States on a number of new priorities for engaging Tribes on broadband and communications priorities, and also serves as a roadmap for the Commission to strengthen and re-invigorate its important government-to-government work with Native Nations.

#### **IV. ACHIEVING THE GOALS OF BROADBAND DEPLOYMENT FOR ALL TRIBES**

Once meaningful definitions and benchmarks have been established, Congress and the FCC must act quickly to develop and implement mechanisms to achieve these goals. Areas that are currently unserved, such as Indian Country, should receive prioritized deployment of broadband services. To efficiently bring access where it is desperately needed, Congress and the FCC must evaluate which existing technologies will be most effective in Indian Country. NPM and NCAI recommend that broadband service be provided by Tribal companies, or alternatively through public-private partnerships that emphasize local control. An effective means of encouraging such deployment may come through an overhaul of the Universal Service Fund (“USF”). However, physical access to broadband service is only one component of effective deployment, and digital literacy training must also be a priority so consumers can maximize the opportunities broadband service provides.

---

<sup>10</sup> *Ensuring Tribal Telecommunications and Broadcast Priorities are Included in the 2009 Federal Government Transition Prerogatives*, PHX-08-070C, at 4-5. A copy of this resolution is attached at Appendix B.

### **A. Prioritizing Unserved Areas**

NPM and NCAI support the Commission's interest in prioritizing broadband deployment to unserved and underserved areas of the country.<sup>11</sup> NPM and NCAI believe that regardless of the definition the Commission adopts for "unserved" and "underserved" areas, the vast majority of Indian Country will qualify as "unserved" due to extremely low penetration rates for all forms of communications services, including, but not limited to, broadband access. This truth is faced each day by the elected leaders, educators, law enforcers, medical providers, business makers, and parents and children who reside on Tribal lands nationwide. The importance in recognizing, and remedying, the "unserved" status of Indian Country cannot be overstated.

When determining prioritized status for unserved and underserved areas, Congress and the FCC should consider areas that currently do not have Internet service or have only dial-up services. Underserved areas of our great nation should receive policy and regulatory priority for broadband deployment, as they continue to fall farther and farther behind with each technological advancement in communications and information technologies. Other considerations for prioritized status should include areas of Indian Country that have typically suffered from market failures in delivering advanced technologies, the availability of other forms of communications infrastructure and service, the importance of broadband deployment within the area (including for public safety and homeland security initiatives), the critical nature of broadband to economic stimulation and education, the paramount needs of distance diagnosis and tele-healthcare, and the importance of broadband to media and democratic participation.

---

<sup>11</sup> Notice of Inquiry, *supra* note 1, at ¶ 25.

## **B. The Use of Existing Technologies**

As most Tribal members are aware, their only current options for broadband service, whether at work or at home, are provided through telephone dial-up, satellite, or Wi-Fi service. Although companies continue to expand fiber optic broadband services, this makes no practical difference to Tribal members living on Tribal lands who do not reap the benefits. Additionally, fixed wireless deployment has often targeted rural areas with no or limited cable or DSL service. While unlicensed technologies provide an answer in some communities, Congress and the FCC must deploy the most reliable and long-lasting broadband technology, such as fiber, as a national effort to provide the best, reliable broadband highways across the country and fulfill the intent of the Communications Act of 1934 “to make available, so far as possible, to all the people of the United States, a rapid, efficient, nationwide and world wide wire and radio communications service with adequate facilities at reasonable charges.”<sup>12</sup>

A thorough analysis should be conducted regarding those technologies that are best suited to deliver broadband to the most extensive area possible given the physical and geographic challenges presented by the terrain of most reservations and Tribal homelands. Consideration should be given to the fact that, while wireless technology has a great potential to connect Native Americans in some of the most remote and geographically distanced communities, these technologies also have their drawbacks, such as high latency issues and slow upload speeds. In analyzing present broadband services, specific attention should be given to underutilized spectrum, dark fiber on Tribal lands, and improving the quality of satellite service.

---

<sup>12</sup> Pub. L. No. 73-416, 48 Stat. 1064 (codified at 47 U.S.C. § 151 (2006)).

## **1. Spectrum**

Congress and the FCC should conduct a thorough review of commercial and government spectrum holdings to identify bands that could be opened for use specifically on Tribal lands. Additionally, while “white spaces” spectrum may be useful for broadband deployment projects, NPM and NCAI advocate the use of white spaces spectrum for FM noncommercial radio stations serving Tribal communities. Given the importance of public radio as a hub within Tribal communities, providing valuable national security and information dissemination capabilities, NPM and NCAI believe that this technology is best utilized for radio broadcasts, broadband access and mobile technologies.

It is important to recognize that, in the map of Indian Country, several unserved communities exist within the zones of exclusion proximate to international borders and, under present rules, would not benefit from the availability of white spaces spectrum-based services and technologies. The Commission should further investigate this inequitable consequence of the intersection of the international interference policies and the emerging white spaces policies, to consider an exception and relief for Tribal lands.<sup>13</sup>

## **2. Dark Fiber**

Congress and the FCC should explore opportunities involving dark fiber on Tribal lands. Ideally, if unused dark fiber is discovered, public-private partnerships could

---

<sup>13</sup> NPM and NCAI estimate that communities and lands of thirty Native Nations would be precluded from white spaces spectrum services due to international border restrictions. Immediately identifiable victims are the communities served by the Tribal Digital Village of the Southern California Tribal Chairman’s Association, located in proximity to the border with Mexico.



develop where Tribal governments or companies would provide the modulating electronics to make use of the existing fiber optic wire. This would not only bring a faster and more reliable connection to residents of Indian Country, but also allow for some degree of local ownership and control.

### **3. Satellite Services**

Satellite services have wonderful ubiquitous coverage capabilities in remote and rural communities. At this time, NPM and NCAI believe that wireless and satellite technologies hold great promise for deploying broadband on Tribal lands because Tribal communities are often remote, have low population densities, or are characterized by rugged terrain. Such areas would likely be served more efficiently by satellite and wireless technologies, which can be deployed with less investment in expensive infrastructure than would wired broadband service offered by a cable operator or local exchange carrier.

Despite their potential, these services, according to subscribers, are laden with restrictive download caps, slow transmission speeds, are expensive to deploy, and, at times, exist as a solution only because there are no other broadband options available. If satellite services can overcome these major technical issues, and service can be improved to match wired capabilities, satellite could become the most affordable broadband solution due to the absent backhaul and middle mile costs associated with wired technologies.

#### **C. The Nature of the Markets of Indian Country, Regulatory Failings, and the Increasing Importance of Tribal Ownership of Broadband Service Providers**

It is critically important that in this inquiry, and all in future inquiries and rulemakings with respect to any of the services which it licenses and regulates, the

Commission acknowledge an understanding of the nature of the market failures that cause the lack of communications services across Indian Country. The Commission is an economic regulator, setting the rules and policies by which American companies participate and compete in national markets. The prevailing legislative and regulatory theories of the past fifteen years have held that market-based competition will bring the best advancements in communications technologies to communities at the most affordable prices. This is not so in Indian Country.

Tribal lands are largely remote, economically disadvantaged and cyclically impoverished communities, which have neither the demographics nor market conditions to allow these theories to operate in their competitive goals. Tribal lands are fertile markets for communications providers that have the responsiveness and scalability to work directly with Tribes and their leadership to tailor the service offerings to the unique needs and challenges of each Tribal community. In Indian Country, as it is often said of rural and remote communities, “one size fits none.”

It is also important to recognize that, in Tribal communities, the provision of the many communications needs highlighted in these comments has been largely assumed by Tribal Governmental entities. Time and again, Tribes have been unable to encourage meaningful service from outside entities to meet needs beyond residential services, and have been forced to become de facto carriers of last resort. This has been a costly effort for those Tribes, but necessary for the provision of basic governmental services and to meet community needs. In these repeated instances, such as the situations of the eight Tribally-owned and operated telecommunications companies, it is paramount for the

Commission to recognize and adhere to the special fiduciary trust relationship that is shared between the federal government and the Tribes.

The Commission recognizes in its Tribal Policy Statement, its own trust relationship with, and responsibility to, federally recognized Tribal entities and the ability of Tribes to determine their own communications future.<sup>14</sup> Once a Tribe is forced to become a carrier of last resort or undertaken to provide to itself the services that it deems necessary to sustain its communities and people, that service, of whatever nature or technology, becomes an important federal trust-relationship asset in their community. As such, the Commission should take care in its rules and policies not to bring harm to that important service, in the pursuit of artificial competition or uninformed adherence to a regulatory theory that fails Indian Country. The Commission must in its National Broadband Plan work with knowledge and regard to the realities of the marketplace on Tribal lands, and its unique responsibilities to those communities as an institution of the federal government.

Consistent with the trust relationship that exists between the federal government, the Commission, and the Tribes, the Commission should consult closely with Tribes and recognize Tribal responsibility for the welfare of Tribal lands. In its Tribal Policy Statement, the Commission announced its standard for Tribal Consultation, stating that “The Commission, in accordance with the federal government’s trust responsibility, and to the extent practicable, will consult with Tribal governments prior to implementing any regulatory action or policy that will significantly or uniquely affect Tribal governments,

---

<sup>14</sup> See *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, Tribal Policy Statement, 16 FCC Rcd 4078 (2000).

their land and resources.”<sup>15</sup> At a minimum, Tribes must have the ability to design and shape broadband systems that are authorized to serve Tribal Lands. A failure to consult with Tribes and to recognize Tribal responsibility for the welfare of Tribal lands would be inconsistent with the trust relationship. Working within the legally defined trust relationship between the federal government and American Indian Tribes and Alaska Native Villages has the greatest potential for both parties to address some of the most challenging barriers facing all the relevant parties with respect to broadband deployment on Tribal lands. Not only would increased Tribal ownership of service providers improve the access to broadband services where the market has failed,<sup>16</sup> it would also promote the Commission’s goal of furthering minority ownership of service providers.<sup>17</sup>

To this end, ownership and management of broadband infrastructure and systems is an issue of vital importance to Tribes. As recognized by the Commission in its NOI, the goals of the Communications Act have not fully been realized on Tribal lands.<sup>18</sup> Competition between various broadband networks, applications and service providers have not been as effective as hoped in Indian Country. Over-reliance on the competitive marketplace to deploy universal, affordable broadband has left scores of Native Americans without a connection to the Internet, or if they have connection it is unaffordable or unreliable. Congress and the Commission should thus work with Tribes to promote Tribally-owned and operated broadband systems serving Native American lands.

---

<sup>15</sup> *Id.* at 4081.

<sup>16</sup> Notice of Inquiry, *supra* note 1, at ¶ 37.

<sup>17</sup> *Id.* at ¶ 101.

<sup>18</sup> *See id.* at ¶ 11.

Instead of a focus on serving a critical mass of users like other broadband providers, Tribal governments focus on service to their citizens and communities. In Indian Country, Tribal governments have become their own providers, and as a result, Congress and the Commission should work with Tribes to determine how best to support and develop this model. Local ownership of broadband infrastructure and service can address critical problems, such as lack of broadband access, slow speeds, limited (if any) provider choice, open access, training and adoption of technology, data collection, and aggregation of demand.

To encourage local ownership on Tribal lands, Congress and the Commission must sit down with Tribes to discuss mechanisms to entice Tribal start-ups, ways to incentivize Tribally-owned broadband services, explore sustainable models, explore spectrum regulatory barriers, and discuss ways to overcome physical and investment barriers to broadband deployment.

#### **D. Encouraging Public-Private Partnerships**

In addition to Tribal ownership of service providers, NPM and NCAI support the Commission's proposal for public-private partnerships as a broadband deployment solution.<sup>19</sup> Market forces alone have been insufficient to ensure widespread deployment of broadband on Tribal lands – indeed, there is just a handful of Tribal residents who have access to their own Tribal service provider. Therefore, Congress and the Commission must consider mechanisms to promote interest in providing services in Indian Country, such as: priority access to stimulus funds, set asides for deployment specifically on Tribal lands, preferred access to or advantageous loan terms for

---

<sup>19</sup> *Id.* at ¶ 115.

businesses deploying broadband in Indian Country, and grants to service providers willing to partner with Tribal governments or startups.

In its NOI, the Commission inquires as to whether it should employ other mechanisms to encourage wireless broadband deployment in rural and Tribal areas. Specifically, the Commission posits whether bidding credits for carriers proposing to serve Tribal lands have been successful in encouraging deployment of wireless services, including broadband, to Indian Country. Although several companies have certified in their pursuit of a commercial mobile wireless spectrum license that they will provide services to the certified Tribal lands to receive the credits, more often this has not been the case when buildout was to be effectuated. The Tribal Lands Bidding Credit has not been as success for one simple reason: it has not resulted in the eventual Tribal ownership of spectrum. Those who would value the highest and best uses of the spectrum do not have access to it. Those who would have a vested interest in the most efficient uses of the spectrum cannot see that need through to development. It is understood that the Tribal Lands Bidding Credit was not designed to be a mechanism for Tribes to achieve spectrum ownership. But in that simple failing, and for the market failing reasons explained heretofore that operate to place the Tribe and Tribal needs at the center of any successful buildout and service offering on Tribal lands, it must be regarded as a step in the right direction, but not the complete answer to a complex problem.

The Commission should review the interactive processes between the parties to the Tribal Lands Bidding Credit process for the potential of modifying it to effectuate increased build out and Tribal ownership models. In order for any such spectrum regulatory mechanism to be successful, it must place the Tribal governmental authority

directly in contact and coordination with the Commission, rather than placing industry providers and their partners in pursuit of spectrum in-between these federal-Tribal partners. The Commission and Tribes should work directly together in concert to review certifications, build out plans and business plans, so that both governmental entities both can be better assured of the true beneficial and meaningful prospects of the potential services and the efficient reliable nature of the spectrum usage. This will work most efficiently when the Tribe itself is the provider of these services throughout its communities.

#### **E. Universal Service Fund**

Almost any essential utility that exists on Tribal lands has only come as a result of federal regulatory prerogatives, significant federal and Tribal investment, and substantial regulatory and programmatic oversight. This includes electricity, water, and roads. The provision and penetration of telecommunications services is no exception. It will be no different with broadband services. The USF has been instrumental in delivering essential communications services to low income families, schools, libraries, and clinics in rural areas and on Tribal lands – the exact places where communications services would not exist because of prohibitive costs. Without the critical Lifeline and Link-Up enhanced support amounts, thousands of families across Indian Country would be without necessary telephone services. The same will be true of these families with respect to broadband services, except now the justification for enhancing the Lifeline and Link-Up support amounts for their households will be even stronger as, in addition to that critical emergency link, news and information, meaningful broadband service will bring the prospect of an educational degree or a job that will address their low-income status and ultimate quality of life.

However, the USF is inefficient and must be reformed. USF reform must acknowledge that its current contribution base is shrinking. Presently, the primary contributors into the USF are carriers operating in the most competitive markets, including wireline, long distance, and wireless telephony. However, increased broadband deployment has significantly changed the marketplace, and consumers are increasingly abandoning traditional services in favor of Internet based communications systems, including email and VoIP. The result is a contribution base on the decline and an increasingly smaller pool of funds.

Additionally, the old cross-subsidy method of universal service is unsustainable in this new competitive market. Often new market entrants can cherry-pick specific low-cost customers, therefore qualifying for funding without incurring high infrastructure buildout costs. Therefore, despite USF funds being distributed, high-cost customers, such as residents of Indian Country, are left without access to vital communications services. The result, however, is not only high-cost customers being ignored by individual carriers, but also a reduction in the pool of funds available for another provider to bring these customers service.

We must also not forget that there are eight Tribal telcos in this country that serve Native communities. As these companies begin to move towards triple play services and network upgrades, the fixed costs incurred in constructing and maintaining these networks are offset by universal service funds. Therefore, universal service funds are going to be in more demand than ever before at a time when the contribution base and overall funding is on the decline. Therefore, to reform the current system, NPM and NCAI recommend the following:



1. Either reclassifying broadband as a telecommunications service or requiring USF contributions from broadband providers to increase the pool of funds available for broadband deployment in high-cost areas such as Indian Country.
2. Redefining “Tribal homelands” as service areas for the purposes of determining universal service subsidies; whether Tribal service areas will be driven by a market driven competitive process, Tribal government process, or hybrid process; and whether to put in place a monitoring system to ensure compliance for quality, availability, price and performance by broadband service providers.
3. Evaluating, through a particularized inquiry and series of focused meetings and hearings with Tribal nations, how wholly new and the existing the universal service Lifeline, Linkup, E-rate, and Rural Health Care programs can help to increase broadband access among communities, low income families, and students on Tribal lands.
4. Continued enforcement efforts relative to carrier’s obligation to perform outreach in a manner intended to reach those on Tribal lands who qualify for the availability of enhanced Tribal lands Lifeline and Link-Up support.

Although the FCC and Congress must overhaul the USF, the support of telephone service that is still vitally important to Native communities cannot disappear. This service must remain as an analog safety net during the transition to broadband. In Indian Country where telephone penetration remains at only sixty-eight percent,<sup>20</sup> communities will continue to need USF support until the last Tribal community is connected to the Internet. Any reform to the USF must therefore take into consideration the continued use

---

<sup>20</sup> See GAO Report, *supra* note 4, at 11.

of wired and wireless telephone services where broadband deployment is either nonexistent or slow, and where emergency protocols may need the redundancy of telephone systems.<sup>21</sup>

#### **F. Digital Literacy Training**

Much like the conversion of analog television to digital television, Native Americans will need education and literacy programs to accompany the “hardware and on-ramps” of connectivity to the Internet. Without an understanding of how the technology works or what potential it might offer to build and support healthy, engaged and robust Native communities, the promise of engagement and participation by Native Americans on issues such as politics, education, economics, health, environment and other civic affairs will remain unrealized. For many it will be the first time they participate in local, Tribal, state or national electoral processes – participation that many already take for granted. In that light, NPM and NCAI support the deployment of digital literacy skills as a national priority.

Digital literacy education should not be limited to traditional courses at public or private educational institutions, but include community-centered basic Internet literacy, media production, and e-commerce (how to start a business online) information. Multimedia skills are essential to the growth, efficiency and responsiveness of the Native-owned radio stations to their listeners both over terrestrial airwaves as well as over the Internet. Only six Native owned public radio stations stream on the Internet today. As more Tribes get connected to broadband, more of our stations will stream their

---

<sup>21</sup> For example, on the Hopi Reservation when the electrical grid is dark, normally the only telephone that will work is typically a rotary phone. All other wireless handhelds are rendered useless.

programming over the Internet and, as a result, will need more Internet educated and savvy producers.

In designing digital literacy courses the failures of past programs must be recognized and avoided. Effective education and training must include sustainable and affordable broadband access in the Tribal communities, up-to-date equipment and continuing support. Digital literacy training and education that includes the use of up-to-date equipment at an off-site training center, only to return the student to communities where they may have no access or only access to outdated computers and equipment, does not produce fully-trained students. Furthermore, once students complete training, instructors must perform follow-up sessions with the trainees in their communities.

To promote this end, a clearinghouse for outreach and training initiatives could certainly be a great resource, but should not be viewed as the only solution. This method certainly will make it easier to access information about what has been tried and who might be an expert in the field. However, training on a more personal level is the most effective way to achieve important digital literacy goals.

As part of the digital revolution, the issue of privacy must be paramount. Consumers who have little or no working knowledge of how the Internet actually works will have no understanding of the privacy implications, especially as it relates to personal data. Further, as more and more Native American communities begin to use the Internet, it is plausible that intellectual property issues may arise as Tribal information could be compromised and accessed by those with malicious intent. NPM and NCAI recommend that Congress and the FCC host hearings to address customer privacy in this digital literacy context.

## **V. THE IMPORTANCE OF BROADBAND DEPLOYMENT IN INDIAN COUNTRY**

As sovereign governments engaged in the exercise of modern self-determination, Tribes are responsible for the health, safety, and welfare of their citizens. They are responsible for policing and securing the homeland within their borders, including several regions spanning international borders; maintaining and sustaining their sacred histories, languages, and traditions; and establishing and fostering healthy economies. For Native Nations, ubiquitous broadband access will be essential for building healthy communities and robust economies despite severe poverty and depressed economic conditions.

Though many Native Americans are not connected to broadband in their homes or at work, they value and desire the opportunities it presents, such as starting a home business, attending college while staying on the reservation, or communicating with a loved one in Iraq. Native Americans living in remote and rural areas – who over the years have witnessed an out-migration of Native people from their homelands, and the associated unraveling of their Native American communities – truly have the most to gain from widespread broadband deployment.

### **A. Civic Participation**

Greater broadband deployment on Indian lands will also foster greater civic participation among Native Americans. Indian Country saw great increases in civic participation and inclusion during the 2008 Presidential election – participation that is only likely to increase as broadband is deployed and new media, such as social networking tools, grows. With broadband deployment even the most rural reservation

residents will have the ability to be a part of participatory government on the Tribal, state, and federal levels.<sup>22</sup>

In Indian Country, information provided through new media technologies are important nation building tools. Not only do broadband services enable essential communication of information, they are increasingly central to economic development, education, public health, and security on Native American lands. Perhaps most important, information provided through new platforms and media technologies play a critical role in catalyzing the growth of a shared vision of the future, enabling Native Nations to articulate and pursue a stronger, more independent, and more vibrant future for themselves.

#### **B. Public Safety and Homeland Security**

Given the lack of telecommunications infrastructure to individual Tribal residences, Native-owned radio stations play vital public safety and homeland security roles on Tribal lands. On most Tribal homelands, Native-owned radio stations serve as public safety hubs. Many Tribal communities do not have an emergency 911 system, and as a result, many Tribal citizens call the radio station for emergency assistance. Additionally, Native-owned radio stations are the first to assist local Tribal governments and law enforcement in announcing any declaration of emergency.<sup>23</sup> Add to this the fact that many Tribes are also on the front line of the war on illegal drugs, immigrant

---

<sup>22</sup> For example, many Tribes hold weekly webinars, video streaming informational meetings, and teleconferences in order disseminate federal stimulus information to Tribal residents. As broadband is more widely deployed, this sort of civic participation will only increase.

<sup>23</sup> For example, every monsoon season in Arizona causes Native communities that are downstream from major tributaries to be on alert for flash floods.

smuggling, and terrorism, and it is clear that Native-owned radio stations play a vital role in keeping Tribe members safe.<sup>24</sup>

Accordingly, if Congress and the Commission are to encourage and advance the ability of Native-owned stations to provide these critical public safety and homeland security efforts more efficiently and with greater responsiveness, the need for these stations to obtain and maintain access to broadband technologies must become a priority.

### **C. Community Development**

Broadband access can further social and community development goals in Indian Country by providing access to information that supports problem-solving, coordination, and accountability through connectedness. Indian Country will have better access to media environments, including organizations and information practices such as journals, libraries and institutions of higher learning that are committed to the creation, organization and dissemination of factual information and interpretive analysis in a way that takes into account the community.

The existing limited broadband connectivity has changed the way that Tribal history is presented, revitalizes the linguistic ability of Tribes, renewed Tribal identity, expanded the cultural and creative expressions of Tribal members, and engaged Native Americans with the rest of the world in unprecedented ways. This can only grow as broadband is deployed into areas that are more remote on reservations.

---

<sup>24</sup> For example, the Tohono O’odham Nation, located in Arizona on the border between the United States and Mexico, relies on its radio station, KOHN, to keep its citizens informed of the latest national threat levels, as well as local and federal homeland security activities.

#### **D. Telehealth**

Broadband deployment has extraordinary potential to give rural reservation Indian Country access to improved healthcare. Indian Country is confronted by many obstacles that prevent quality health care, including geographic isolation, low income, inadequate public utility services, and cultural barriers. In fact, Native people have a life expectancy 2.4 years lower than the U.S. average, and die at higher rates than other Americans from diseases such as tuberculosis (600% higher) and diabetes (189% higher), to name a few.<sup>25</sup>

Ubiquitous broadband access would allow health care professionals to drastically improve the quality of medical care in these areas. Telehealth would enable health care professionals to remotely monitor patients, facilitate collaboration between specialists, and exchange and analyze medical images, all at a reduced cost and increased convenience for the patient. Additionally, remote online monitoring of chronic illness can replace periodic, or even frequent, trips to clinics by patients in remote areas. However, despite the immense potential for telehealth, it takes great speeds to use this sort of technology, speeds not readily available in reservation communities.

#### **E. Job Training and Teleworking**

In developing a national broadband plan, job creation must be a part of the process of deployment, not only in terms of developing the infrastructure in the short term, but in the creation of jobs and economic growth. The possibility of expanded use of teleworking based on access to broadband capability has enormous positive implications for economic development in Indian Country. This capability means

---

<sup>25</sup> Indian Health Serv., *Facts on Indian Health Disparities* (Jan. 2006), <http://info.ihs.gov/Files/DisparitiesFacts-Jan2006.pdf>.

creating virtual jobs and combating staggering unemployment rates, which are as high as fifty percent in some areas.

Broadband access can be utilized by Tribal communities to give citizens access to valuable job training. Training opportunities could be maximized by working with the Department of Labor's Workforce Development program. In 2007, NPM partnered with another program, the Department of Labor Wise Up Program, to bring financial literacy training to Native women in northern Arizona. This partnership employed the use of the radio networks to disseminate information about the on-site trainings which were followed by webinars on the Internet. By working with financial representatives, local community leaders, and the Department of Labor, NPM was able to bring its technological expertise to a population of women who were the primary wage earners for their families. Broadband access made it possible for these women to continue their financial literacy education online at a local community center. Widespread broadband deployment would open these opportunities to everyone in Indian Country.

Technological considerations must allow for video conferencing, as well as the sharing of large files and the like to connect the geographically dispersed workers. With these technological capabilities, reservation communities, many of which have existing relationships with Department of Labor Workforce Development programs, will have the ability to train workers and employ Tribal members. Workers would not only be able to obtain virtual training, but would also be employed in telework jobs and able to maintain their community ties.



## **F. Education**

Increased opportunities for educational advancement are a major benefit of broadband deployment in Indian Country. Deploying broadband in classrooms would transform the quality of education on reservations by enabling activities such as Internet research, online collaboration with other students, video conferencing with professors and teachers, real-time science explorations, and virtual museum experiences.

NPM and NCAI also envision technology partnerships playing a large role in creating access in reservation communities. Libraries, community centers, and certain businesses can partner with schools, giving more access to residents who may not have the equipment to access the Internet. These partnerships play a crucial role in teaching computer literacy to vulnerable populations.

The opportunities for distance learning will also increase with broadband deployment, thereby acting as an education equalizer allowing Tribal colleges to partner with other colleges and universities. Many colleges and universities have great interest in developing stronger distance learning programs, including programs designed specifically for Indian Country. Online education will give even the most rural reservation student access to a college education. This is particularly important in Indian Country, as Native American students often experience great culture shock when attending colleges away from their home communities, and are prone to dropout. Through distance learning, Native American students will have access to higher education, while contributing to community development in their home villages and reservations.

For example, Arizona State University expects to significantly increase student enrollment as access to its curriculum becomes available on the various reservations in Arizona, and has made a specific commitment to bring programs and classes to the Navajo Nation.<sup>26</sup> In the last decade at Arizona State University alone, the number of annual Native American graduates has more than tripled;<sup>27</sup> greater broadband access will only bring about further growth.

## **VI. CONCLUSION**

The FCC's intention to create a National Broadband Plan is a tremendous first step in addressing the lack of broadband deployment in unserved and unserved areas of the Nation, specifically in Indian Country. Broadband access on Tribal lands would present extraordinary opportunities previously denied to Native Americans and those who reside on Tribal lands. By prioritizing local Tribal ownership and Tribal-centric operation, as well as enforcing well articulated standards focused on actual performance, this plan can make great strides in providing Indian Country the broadband access it so desperately needs.

Respectfully submitted,

### **NATIVE PUBLIC MEDIA**

By: \_\_\_\_\_/s/\_\_\_\_\_  
Loris Ann Taylor  
Executive Director  
Native Public Media  
P.O. Box 3955  
Flagstaff, AZ 86003

---

<sup>26</sup> See Office of the President, Native American Affairs, Arizona State University, <http://www.asu.edu/president/zah/> (last visited May 28, 2009).

<sup>27</sup> Facts, Office of the President, Native American Affairs, Arizona State University <http://www.asu.edu/president/zah/facts/index.html> (last visited May 28, 2009).

Telephone: (928) 853-2430

**NATIONAL CONGRESS OF AMERICAN INDIANS**

By: \_\_\_\_\_/s/\_\_\_\_\_  
Jacqueline Johnson Pata  
Executive Director  
National Congress of American Indians  
1516 P Street, NW  
Washington, DC 20005  
Telephone: (202) 466-7767

By: \_\_\_\_\_/s/\_\_\_\_\_  
Geoffrey C. Blackwell  
Chickasaw Nation Industries, Inc.  
3034 Windy Knoll Court  
Rockville, MD 20850  
Telephone: (202) 253-4846  
*Chairman, Telecommunications Subcommittee of the  
National Congress of American Indians  
Member, Native Public Media Board of Tribal Advisors*

Dated: June 8, 2009

Testimony of Geoffrey C. Blackwell

on behalf of

The National Congress of American Indians, and Chickasaw Nation Industries, Inc.

at the

American Recovery and Reinvestment Act of 2009 Broadband Initiative

NTIA/USDA/FCC Public Roundtable Field Hearing

Tuesday, March 17, 2009

The Charleston Heights Art Center, Las Vegas, Nevada

My name is Geoffrey Blackwell. I work as the Director of Strategic Relations and Minority Business Development for Chickasaw Nation Industries, a family of companies wholly owned by the Chickasaw Nation. It is my honor to chair the Telecommunications Subcommittee of the National Congress of American Indians, the oldest and largest inter-Tribal government representative organization in the United States.

I'm honored to bring you greetings on behalf of the National Congress of American Indians at today's important joint field hearings on the new Recovery Act broadband stimulus programs.

The Recovery Act and Conference Report ask that our host agencies begin to orient their broadband programs to communities rather than the telecommunications industry. Our important opportunity now is to define broadband in community-oriented terms.

It is important to note that the manner in which the agencies define "broadband" will have a ripple effect on both the type and scope of development on Tribal lands, including both those of American Indian Tribes and Alaska Native Villages. Time and again, Federal standards set in this context define what the market will provide to the consumer and what types of projects grant recipients are able to create. Thus, when *technology or speed* standards associated with the grants are simplistic or low, the projects created often meet only those standards.

Tribal communities will only benefit from a definition of "broadband" that is inclusive on the myriad responsibilities that they perform. The definition of "broadband" should allow minimum standards that will provide for meaningful effectuation of the purposes of not just residential service, but also primary and continuing education, telemedicine and distance diagnosis, modern media involvement, public safety and homeland security,

and of course, the business oriented requirements of the primary critical backbone for a sustainable economy.

It is also important to note that--in Tribal communities--the provision of these myriad communications services has been largely assumed by Tribal Governmental entities. Confronted by the lack of market conditions and demographics that would allow the 1996 Act to operate in its competitive goals, time and again Tribes have been unable to encourage meaningful service from outside entities and have been forced to become de facto carriers of last resort. This has been a costly effort for those tribes but necessary for the provision of basic governmental services.

Indian country recognizes that we need adaptability and scale-ability within a broadband project to serve the dire needs of our communities. Any broadband project should be oriented to local control and be directly linked to local economic development. Accountability and transparency must be key components. In the case of Tribes, we seek recognition of, first, the need for ongoing Federal-Tribal government-to-government consultation, in fulfillment of the federal trust responsibility, that is designed to routinely review and ensure lasting compliance with the Recovery Act's goals of infrastructure and economic stimulus in Indian Country, and, second, of primacy for the opportunity to serve the needs of our own communities, for no one else is motivated to do what we must do for our own people.

In the short time since the announcement of this hearing, I have been able to speak with Tribal broadband providers and some critical information emerges about how their programs actually operate. Any true community oriented definition of broadband should have critical elements for speeds that are symmetrical and sustained. Otherwise it is not a definition that will result in truly successful application.

Some of these tribal communities that provide broadband, operate on speeds that are well below those available throughout the United States. I'm informed that the need for redundancy is critical in many areas. I have learned that in order to provide some form of educational services certain provide 3 meg broadband service. Certain provide distance diagnosis service for the reading of high resolution x-rays at the rate of 10 meg broadband service.

I offer these, and stress to this panel, not to utilize them as a basic baseline definition, but as demonstrative of the demands of different applications and the dire needs not met elsewhere in Indian Country. I would ask: at what speeds are these critical missions delivered in other regions of the United States? We in Indian Country should not expect anything lower, especially now given the intent of Congress and the opportunities of a new broadband paradigm.

That is not to say that we don't understand the challenges associated with delivering these services in Indian Country. We look to work with those who see the opportunities we see. To be sure, there is considerable data indexing the lack of broadband penetration in rural communities, however these do not accurately measure our

situation on Tribal Lands. In Indian Country, we have an anecdotal 5-8% broadband penetration rate. This is anecdotal so I am quite skeptical of the higher end.

What I AM confident about is that our statistics for communications deployment in Indian Country are deplorable. We have a 68% telephone penetration rate compared to the almost 97% national average. Among the 567 federally recognized tribal entities we have only 33 community radio stations. And only 8 Tribes have been able to create their own Tribally owned and operated telecommunications companies. There are a few additional important projects that are forced to operate in unregulated spectrum.

On the definitions of “Unserved” and “Underserved,” the person sitting in my seat could justifiably state that a 5% broadband penetration rate is “unserved”--at the lowest end of “unserved.” Tribal lands are unserved. That would be somewhat simplistic however, because we believe there are social economic challenges that definitions must be oriented to meet. These are not best understood in the context of a speed, or the presence of a simplistic offering, or the presence of artificial competition.

There is a question as to whether competition should be used as a measurement for the underserved definition. It is important to raise the awareness here of the special fiduciary relationship that is shared between the federal government and the Tribes. Once a Tribe is forced to become a carrier of last resort, that service, of whatever nature or technology, becomes an important trust asset in their community. The FCC itself recognizes the ability of Tribes to determine their own communications future.

Certain Tribes have undertaken significant debt and risk in these ventures and the federal government should seek to consult with Tribal Nations and analyze whether certain aspects of their actions would put these Tribal efforts at risk in the name of competition—competition that could be artificially supported in certain instances. This is not anti-competitive, it is explanatory of the challenges Tribes face in the reality of the markets on Tribal lands and the ineffectiveness of competition as a goal in and of itself.

Furthermore, recognizing the modern reality of Tribal lands, the definitions of “unserved” and “underserved” should include criteria for analysis that represent the entire context of a community that can benefit from broadband expansion. In Indian Country that means considerations of the joblessness of Tribal lands and similarly situated rural areas, the frightening health care statistics that are present on Tribal lands, and the performance of tribal students in national academic standards.

Only with appropriate community-oriented definitions in mind, will significant broadband expansion in Indian country result in an improved quality of life, healthcare, and education.

Thank you.



# NATIONAL CONGRESS OF AMERICAN INDIANS

## The National Congress of American Indians Resolution #PHX-08-070C

### TITLE: Ensuring Tribal Telecommunications and Broadcast Priorities are Included in the 2009 Federal Government Transition Prerogatives

#### EXECUTIVE COMMITTEE

**PRESIDENT**  
**Joe A. Garcia**  
*Ohkay Owingeh*  
*(Pueblo of San Juan)*

**FIRST VICE-PRESIDENT**  
**Jefferson Keel**  
*Chickasaw Nation*

**RECORDING SECRETARY**  
**W. Ron Allen**  
*Jamestown S'Klallam Tribe*

**TREASURER**  
**gaiaashkibos**  
*Lac Court Oreilles Band of Lake Superior Chippewa Indians*

#### REGIONAL VICE-PRESIDENTS

**ALASKA**  
**Mike Williams**  
*Yup'iaq*

**EASTERN OKLAHOMA**  
**Joe Grayson, Jr.**  
*Cherokee Nation*

**GREAT PLAINS**  
**Ron His Horse Is Thunder**  
*Standing Rock Sioux Tribe*

**MIDWEST**  
**Robert Chicks**  
*Stockbridge-Munsee*

**NORTHEAST**  
**Randy Noka**  
*Narragansett*

**NORTHWEST**  
**Ernie Stensgar**  
*Coeur d'Alene Tribe*

**PACIFIC**  
**Juana Majel**  
*Pauma-Yuima Band of Mission Indians*

**ROCKY MOUNTAIN**  
**Willie Sharp, Jr.**  
*Blackfeet Tribe*

**SOUTHEAST**  
**Archie Lynch**  
*Haliwa-Saponi*

**SOUTHERN PLAINS**  
**Darrell Flyingman**  
*Cheyenne-Arapaho Tribes*

**SOUTHWEST**  
**Derek Valdo**  
*Pueblo of Acoma*

**WESTERN**  
**Alvin Moyle**  
*Fallon Paiute-Shoshone*

**EXECUTIVE DIRECTOR**  
**Jacqueline Johnson**  
*Tlingit*

#### NCAI HEADQUARTERS

1301 Connecticut Avenue, NW  
Suite 200  
Washington, DC 20036  
202.466.7767  
202.466.7797 fax  
www.ncai.org

**WHEREAS**, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

**WHEREAS**, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

**WHEREAS**, the residents, both Native and Non-Native, of communities of American Indian Tribes and Alaska Native Villages are the worst served citizens in America with regard to telecommunications and broadcast services; and

**WHEREAS**, current market forces and governmental programs are not meeting the communications infrastructure needs of American Indian and Alaska Native communities; and

**WHEREAS**, the United States shares a unique government-to-government and trust relationship with federally-recognized American Indian Tribes and Alaska Native Villages, to ensure they receive parity of communications services with other American communities; and

**WHEREAS**, the 1934 Communications Act, as amended by the 1996 Telecommunications Act, does not include Tribal governments, or acknowledge tribal sovereignty, self-determination and the federal trust responsibility; and

**WHEREAS**, the Communications Act of 1934 and Telecommunications Act of 1996 did not recognize the inherent rights and responsibilities of tribes, and left tribal roles, needs and abilities unaddressed, a root cause of why Native Nations lag far behind the rest of the nation in virtually every measure of communications connectivity; and

**WHEREAS**, the absence of tribal governments and the lack of acknowledgement of tribal sovereignty, self determination and the federal trust responsibility in the Act has engendered regulatory instability and ambiguity, posing numerous barriers to deploying critical telecommunications infrastructure and services and resulting in numerous cases of dispute and litigation; and

**WHEREAS**, the 2000 Federal Communications Commission *Statement of Policy on Establishing a Government to Government Relationship with Indian Tribes*, 16 FCC Rcd 4078 (2000), recognizes and promotes the “general trust responsibility with, and responsibility to, federally-recognized Indian Tribes” and also “recognizes the rights of Indian Tribal governments to set their own communications priorities and goals for the welfare of their membership” (16 FCC Rcd 4081); and

**WHEREAS**, the Federal Communications Commission’s Tribal Policy Statement, including its certain Goals and Principles, has not been clarified or fully implemented; and

**WHEREAS**, the United States has the opportunity to enact laws, create regulations, and undertake policies that would greatly improve the ability of American Indian and Alaska Native Tribal Government Entities to access, control and secure both traditional telecommunications, broadcast, and new media; and

**WHEREAS**, Government-to-Government consultation, predicated on effective and timely coordination, is the proper, legal, and expected means of the U.S. Federal government effectuating policies that will impact federally recognized American Indian Tribes and Alaska Native Villages; and

**WHEREAS**, the last two field hearings held by the Federal Communications Commissions in Indian Country, entitled “Overcoming Obstacles to Telephone Service for Indians on Reservations” were held in the spring of 1999, were limited in their scope to the market conditions and technologies of that time, and did not address the important developments of the past decade such as the explosive need for universal service support, new wireless platform services, new media platforms, and the now critical need for robust broadband community networks; and

**WHEREAS**, the Communications Act of 1934, as amended by the Telecommunications Act of 1996, requires Eligible Telecommunications Carriers of last resort, who receive federal Universal Service Fund support, to provide universal access to all American communities and households, at reasonable rates and parity of service with urban communities; and

**WHEREAS**, eight American Indian Tribes—out of 563—have had to form their own Tribally owned and operated telecommunications service, initially as community critical need addressing telephone companies and now developing diversified services models, to meet their tribal community’s needs; and

**WHEREAS**, all eight Tribes that formed their own telecommunications entities have seen dramatic increases in service penetration rates, at average over 85% service gains in their communities (some are at 98% service connection attainment) since the formation of their own telecommunications service; and



**WHEREAS**, since the last Congressional action implementing the Telecommunications Act of 1996 has only resulted in two American Indian Tribes forming their own telecommunications services companies; and

**WHEREAS**, because of a lack of infrastructure acquisition opportunities, lack of access to regulated wireless spectrum, and related challenging market conditions, several other Tribal Entities have had to form telecommunications services based on non-traditional platforms, such as unregulated wireless spectrum projects, which are inherently limited to serve the multiple needs of Tribal communities in the current regulatory framework; and

**WHEREAS**, only 67.9% of American Indian homes currently have telephone services compared to the national average rate of 98%, with certain Tribes experiencing much lower telephone penetration rates; and

**WHEREAS**, reliable current statistics on the state of high speed internet broadband services on Tribal lands nationwide is not available; and

**WHEREAS**, according to the 2000 Census, Native Americans and Alaska Natives number at 4.3 million people or 1.5 percent of the total U.S. population and own zero percent of television stations and only .3 percent of the radio stations in the United States with no data of media ownership among Native American women; and

**WHEREAS**, the opportunities for Tribe Entities to obtain spectrum are quickly diminishing, and there is a serious problem of public radio station under-representation in Indian Country, with a discouragingly low number among the more than 562 federally recognized tribes of only 33 Native American public radio stations serving Indian Country, while most of the public radio spectrum is being licensed for non-Native uses; and

**WHEREAS**, while much of the FCC Media Ownership efforts have been focused on increasing “minority” ownership opportunities, federally recognized Tribal Entities are not simply part of the minority community, but distinct sovereign legal governmental entities with their own individually unique cultures and traditions, governmental priorities, and historic geopolitical situations; and

**WHEREAS**, Congress and the Federal Communications Commission are on the verge of major restructuring and modification to the Universal Service Fund; and

**WHEREAS**, the existing and proposed regulatory changes have had and, absent change, will have minimal impact on connecting the last mile American Indian and Alaska Native communities; and

**WHEREAS**, NCAI has enumerated several Tribal telecommunications and broadcast priorities in the body of communications-related resolutions, including those involving public policy discourse guidelines and specific statutory and regulatory changes, adopted by NCAI since 2002 and the creation of the NCAI Telecommunications Subcommittee; specifically, the NCAI Resolutions SAC 02-087, ABQ 03-058, ABQ 03-114, TUL 05-041, TUL 05-068, TUL 05-109, SAC 06-093C, DEN 07-013, and DEN 07-014, among others; and, has enumerated additional priorities represented in this resolution.

**NOW THEREFORE BE IT RESOLVED**, that the NCAI does hereby support and adopt that the telecommunications and broadcast priorities of Indian Country be included in the priorities of the 2009 Transition Prerogatives of the Executive Branch, Legislative Branch, and Federal Communications Commission; and

**BE IT FURTHER RESOLVED**, that the NCAI strongly urges the President of the United States, the Congress, and the Federal Communications Commission to immediately implement a Tribally targeted telecommunications and broadcast initiative with the outcome of connecting every Tribal community; and

**BE IT FURTHER RESOLVED**, that this new Tribal telecommunications and broadcast initiative, at the Executive, Congressional and agency levels, include direct government-to-government consultation with federally recognized Tribal entities, and renewed efforts to work directly with Tribal governments, associations and entities in ongoing dialogue and coordinated purposeful efforts; and

**BE IT FURTHER RESOLVED**, include the purposeful inquiry as to whether the current federal regulatory framework indeed operates successfully to create actual market conditions that bring about change to the deplorable lack of services on Tribal lands; and

**BE IT FURTHER RESOLVED**, that this new Tribal telecommunications and broadcast initiative include renewed efforts to effect structural changes at the Federal Communications Commission to ensure the effect operation of the trust relationship within its halls and in its actions, to include: (1) the creation of the Tribal office, with an effective operational and regulatory mission, located appropriately in the structural framework of the Federal Communications Commission, and supported by appropriate budget and staffing, (2) the creation of seats for Tribal Government representatives on the Federal State Joint Board on Universal Service, and (3) the creation of a formal Tribal Advisory Committee for the Federal Communications Commission; and

**BE IT FURTHER RESOLVED**, that this new Tribal telecommunications and broadcast initiative include a renewed federal focus undertaken through results oriented field hearings focusing on the implications of communications connectivity as an essential necessary utility to support the future economic opportunities, health, safety, and welfare of Tribal communities; and

**BE IT FURTHER RESOLVED**, that this new Tribal telecommunications and broadcast initiative, its field hearings, dockets and efforts include the full panoply of implicated telephony and broadcast media communications technologies and services regulated by the federal government, including important emerging technologies that have developed since the field hearings of ten years past, such as high-speed internet broadband services, among others; and

**BE IT FURTHER RESOLVED**, that this new Tribal telecommunications and broadcast initiative, its field hearings, dockets and efforts include a focus on the removal of regulatory barriers to entry which operate in the current regulatory framework to obviate the opportunities to provide communications services on Tribal lands; and

**BE IT FURTHER RESOLVED**, that this new Tribal telecommunications and broadcast initiative include a renewed legislative and regulatory effort to create systems of obtaining measurable and reliable statistical reports, both annual routine reports and potential specific inquiry reports, aimed specifically at Tribal lands and on the full panoply of the communications deployment related market information in Tribal communities, so that such information may be effectively shared and relied upon for effective decision and rulemaking; and

**BE IT FURTHER RESOLVED**, that, pursuant to this new Tribal telecommunications and broadcast initiative, the Federal Communications Commission open new regulatory dockets and initiate rulemakings related to the various communications services it regulates, formalizing the regulatory process to take deliberate steps to address the infamous lack of services and connectivity in American Indian and Alaska Native communities nationwide; and

**BE IT FURTHER RESOLVED**, that this formalized federal regulatory rulemaking process include direct government-to-government Tribal consultation and renewed efforts to work directly with Tribal governments, associations and entities in ongoing dialogue and coordinated purposeful efforts; and

**BE IT FURTHER RESOLVED**, that this formalized federal regulatory rulemaking process include an inquiry as to how the Federal Communications Commission can fully implement the Goals and Principles of its Tribal Policy Statement, including regularized formal consultation with Tribal entities on its regulatory actions; and

**BE IT FURTHER RESOLVED**, that this formalized federal regulatory rulemaking process include direct consultation with Tribes to further develop a renewed plan and purposeful approach to the Federal Communications Commissions “Indian Telecommunications Initiatives” program, to include continued coordinated efforts with other inter-Tribal government organizations and entities, to include increased education efforts aimed at the critical communications needs of American Indian and Alaska Native communities; and

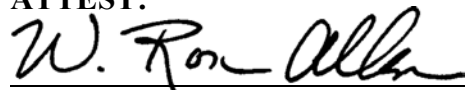
**BE IT FURTHER RESOLVED**, that the NCAI fully expects and urges that the federal government honor both its federal trust responsibility to Tribes and fulfill the mandate of the Communications Act of 1934 and the Telecommunications Act of 1996 to provide universal service for all American communities; and

**BE IT FURTHER RESOLVED**, that Congress and the federal government make every effort and resource to bring the most modern technology and broadband capacity to all American Indian Tribal and Alaska Native Village communities; and

**BE IT FINALLY RESOLVED**, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

**CERTIFICATION**

The foregoing resolution was adopted by the General Assembly at the 2008 Annual Session of the National Congress of American Indians, held at the Phoenix Convention Center in Phoenix, Arizona on October 19-24, 2008, with a quorum present.

  
\_\_\_\_\_  
President**ATTEST:**  
\_\_\_\_\_  
Recording Secretary